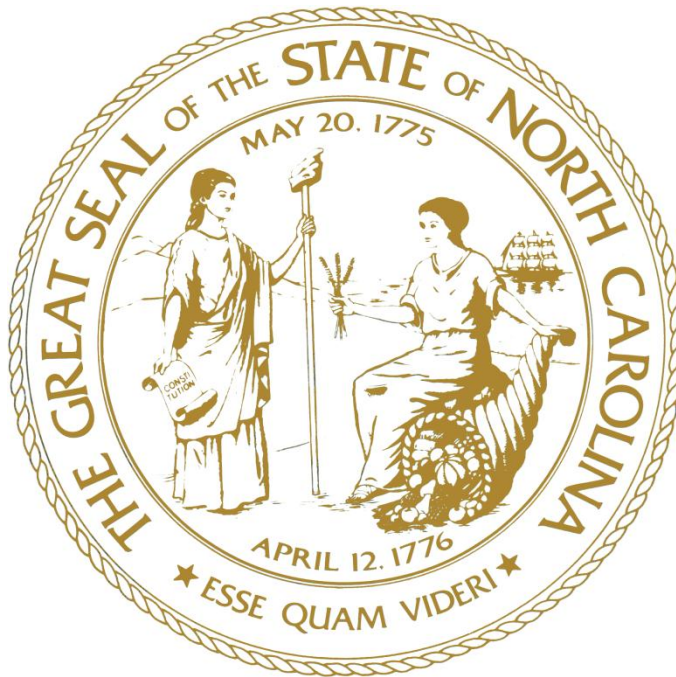


North Carolina State Crime Laboratory



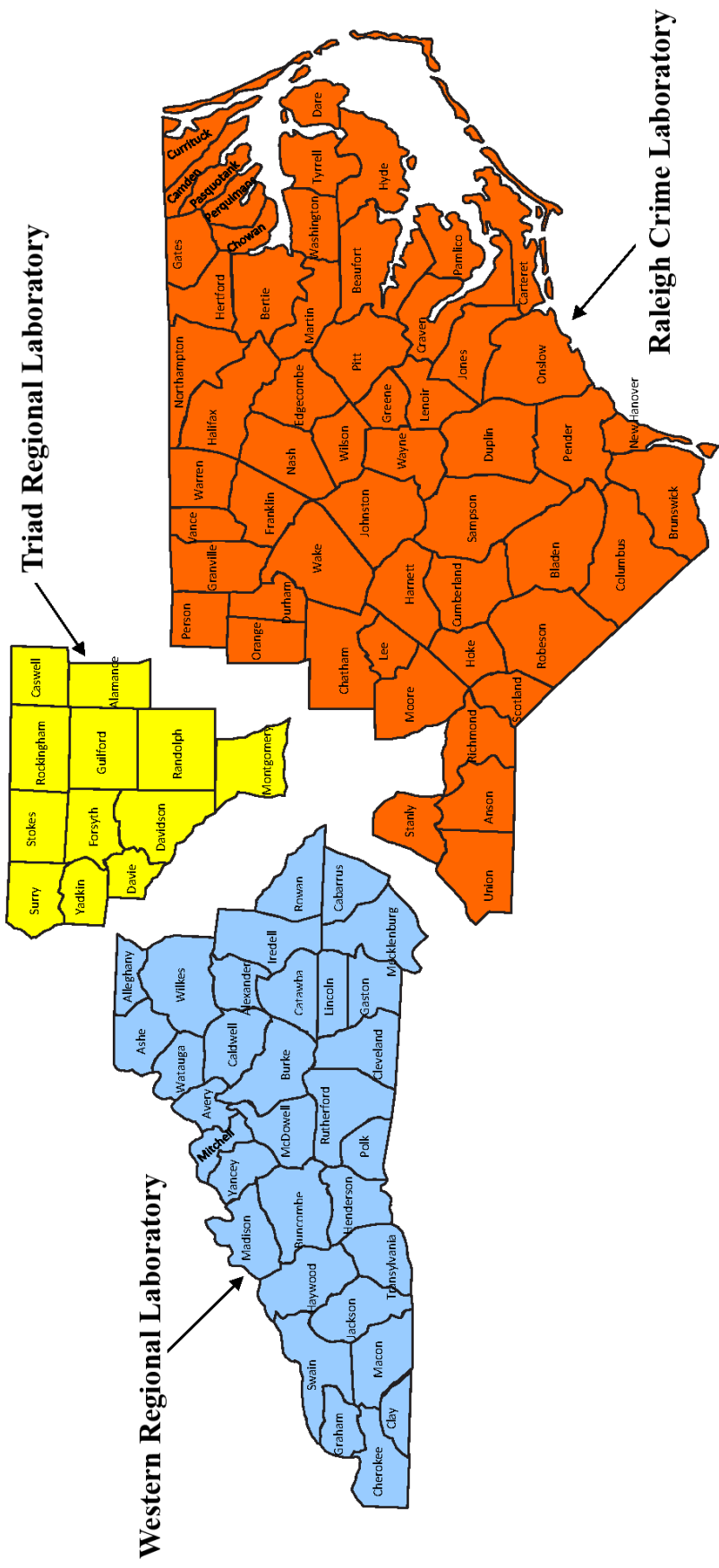
“If the law has made you a witness,
Remain a creature of science.
You have no victim to avenge,
No guilty or innocent person to convict or save --
You must bear testimony within the limits of science.”

Dr. P.C.H. Brouardel
19th Century French Medico-legalist

March 8, 2012

Joseph R. John, Sr., Laboratory Director

North Carolina State Crime Laboratory



Unequivocal directives of SL 2011-145:

1. Repeals (twice) and “abolishes” the statutory creation of L.E.S.S., including its responsibility to “provide central storage and management” of “Jane Doe” rape kits.
2. “Reallocates” any “State-owned personal property” associated with the L.E.S.S. warehouse to the North Carolina State Crime Laboratory.
3. Directs that the North Carolina Department of Justice “shall assume” the warehouse lease.

SL 2011-145 does not:

1. Contain any provision for the relocation of L.E.S.S., or for the creation of a substitute agency, or make an assignment of any entity/agency to be responsible for “provid[ing] central storage and management of [“Jane Doe”] rape kits.”
2. Create any statutory authorization for the State Crime Laboratory to perform the “Jane Doe” rape kit storage and management functions previously conducted by L.E.S.S. (the Crime Lab doing so without such authorization would implicate issues of substantial legal liability).
3. In any way confer custody upon the North Carolina State Crime Laboratory of the “Jane Doe” rape kits currently located in the L.E.S.S. warehouse—but only “reallocates *State-owned* personal property” to the Crime Lab (completed rape kits are not “State-owned,” but rather are the property either of the examined victim, the investigating law enforcement agency or the institution (hospital) performing the examination.

Statutory Provisions--SL 2011-145:

1. Section 19.1 (g): “The following statutes are amended by deleting the language ‘Crime Control and Public Safety’ wherever it appears and substituting ‘Public Safety.’
2. Section 19.1 (u): “Parts 1 and 7 of Article 11** of Chapter 143 of the General Statutes are repealed.”
3. Section 19.1 (bb): “Part 7 of Article 11**of Chapter 143B of the General Statutes is repealed, and the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety is abolished.”
4. Section 19.1 (cc): “The evidence warehouse that was operated by the Law Enforcement Support Services Division of the Department of Crime Control and Public Safety prior to the effective date of this section, and all State-owned personal property located in or associated with the warehouse is hereby reallocated to the North Carolina State Crime Laboratory of the Department of Justice. The Department of Justice shall assume any lease to which the warehouse is subject at the time this section becomes effective.”
5. Section 19.1 (jjj): “Other than subsection (iii) of this section, this section becomes effective January 1, 2012.”

****N.C.G.S. § 143B-508, Article 11, Part 7. Law Enforcement Support Services Division:**

“(2) Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and creation and maintenance of a data bank of statewide storage location of post conviction evidence or other similar programs.

(3) Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or ‘Jane Doe’ rape kits without victim consent.”

North Carolina State Crime Laboratory Concerns:

1. *Chain of custody*--Transferring custody of “Jane Doe” rape kits currently stored in the Warehouse (160 on open shelving and 10 in a large refrigeration unit) from DPS to the State Crime Laboratory, or indeed to another agency, would create an additional link in the “chain of custody” for the kits, thereby adding an additional burden to any potential future prosecution.
Any resolution should have as its ultimate focus the preservation of the rights of the victims to a viable future prosecution and the protection of the evidentiary chain of custody.
2. *Accreditation*—Existing Crime Lab procedures (“Evidence Submission Procedures, (7) Disposition of Evidence: Evidence cannot be stored at the laboratory”), and newly drafted ISO 17025 procedures based on Model ISO/IEC 17025 International Standards (“Procedure for Evidence Management 4.7.2: No evidence shall be stored at the Laboratory indefinitely”), upon which accreditation is/will be dependent, preclude permanent retention evidentiary items.
If new procedures are required, the ongoing strong and positive momentum at the State Crime Laboratory may be hampered.
3. *Funding*—without appropriate staff and an adequate operating budget, the program, including the current lease of \$6,000.00/mo., could not be sustained. Crime Lab staffing requirements are severely stretched in consequence of a substantially increased caseload (15% over previous year) and the US Supreme Court decision in *Melendez-Diaz v. Massachusetts*.
In addition, a new procedure for the permanent retention of evidentiary items would require the time-consuming and likely costly development, purchase and installation of an additional tracking module within Forensic Advantage, the Laboratory electronic information management system.

4. *Lack of continuity*—developing and establishing a new program, including drafting, reviewing and approving new procedures for the permanent retention of evidentiary items in accordance with strict and exacting Crime Lab evidence handling and maintenance regulations, would be required, as would the development and distribution of new instructions, forms, labels, packaging and other materials, and extensive retraining of submitting agencies.
5. *Statutory mission*—N.C.G.S. § 114-16 mandates that “laboratory facilities” shall be provided for “the analysis of evidences of crime,” thereby designating the function of the Crime Lab as scientific examination and analysis. The statute makes no mention of serving as a permanent repository of items of an evidentiary nature.